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Presented to the House Subcommittee on Public Lands and Environmental Regulation
Oversight Hearing on "*School Trust Lands Ownership Within Federal Conservation Areas*."
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Chairman Bishop, Ranking Member Grijalva, and Members of the Subcommittee, my name is Kathy Opp and I am the current President of the Western State Land Commissioners Association in addition to my duties as the Deputy Director of the Idaho Department of Lands. I thank the Subcommittee for conducting this hearing to examine how to resolve the land tenure issues between state school and institutional trust lands and federal land ownership. I am before you today to propose a new tool for states to more effectively manage our school trust lands and to improve the management of federal conservation lands.

The Western States Land Commissioners Association ("WSLCA") is comprised of 23 Western, and some not so Western, states who share the common mandate of managing trust lands on behalf of school children in our states. These lands are managed on a bi-partisan basis, with the beneficiaries first and foremost to our mission. Upon statehood, our member states were entrusted with hundreds of millions of acres of lands and minerals to be managed specifically to provide funding for public education and other state institutions. Today, our member states manage over 447 million acres of public trust lands, endowed trust lands, submerged lands, and minerals. To put this in perspective, 447 million acres is roughly two and one half times the size of Texas. As a group, we are the second largest land manager in the nation, second only to the Federal Government. Since 1949, our Association has gathered with the goal to educate and inform one another about sound policy and best practices to ever improve the management of these lands on behalf of our beneficiaries. Currently, our combined educational trusts amount to over 271 billion dollars which generated over 3.8 billion dollars for public schools in 2012. Our members manage land for many purposes, including mineral and energy development, timber, agricultural production, commercial and residential development, open space, critical wildlife habitat, recreation, and a myriad of other uses that generate funds for public schools and other endowed institutions.

The vast majority of the 447 million acres of lands and minerals that our member states manage by the nature of our statehood acts are interspersed with federal lands throughout the West. During early settlement in the Midwest from 1803 to 1858, states were granted one section per township. In the arid West, between 1859 and 1890, states were provided with two sections per township, and in the really arid West, meaning Utah, Arizona, and New Mexico, these states were granted four sections per township. Ninety-three percent of the federal lands lie within the 11 most Western states and Alaska. There, federal ownership comprises 52 percent of these states. In Idaho, approximately 62% of all lands within the state are owned by the federal government. In many cases, the scattered state sections are intertwined with lands managed by the Department of Interior and the U.S. Forest Service where land management mandates vary drastically from the legal mandates placed upon state trust land managers. Pursuant to our statehood acts and state constitutional mandates, states are obligated to manage these lands with

undivided loyalty to a single purpose—to generate revenue for public schools and state institutions.

According to the U.S. Supreme Court in *Andrus v. Utah*, "the school land grant was a 'solemn agreement' which in some ways may be analogized to a contract between private parties. The United States agreed to cede some of its land to the State in exchange for a commitment by the State to use the revenues derived from the land to educate the citizenry." However, because the settlement and privatization of federal lands largely came to an end with the passage of the Taylor Grazing Act in 1934, millions of acres of trust lands remain within federal ownership. For almost a century, Congress has made decisions to reclassify federal lands with a wide range of management and policy prescriptions. While the Park Service approaches its 100th anniversary and as the country now appreciates nearly 50 years of designated Wilderness, the mandate for school trust lands has remained constant for over 200 years. Congressional actions and policy decisions over the decades have locked up millions of acres of school lands and minerals within National Parks, Wilderness areas, Wildlife Refuges, National Monuments and other federal designations. In order to keep the "solemn promise" to the school children of our states, we must craft effective tools to move these trapped state trust lands and minerals from within constrictive federal ownership into other locations where the generation of income is appropriate and acceptable.

Existing administrative and legislative solutions are costly, complicated, unpredictable, and horribly time consuming. Administrative land exchanges with agencies within the Department of Interior or with the U.S. Forest Service are inadequate as the sole tool to complete land transfers between states and the Federal Government. The Department of Interior has implemented policies and guidelines that have made administrative exchanges nearly impossible to complete in any reasonable time frame. Moreover, the Department has failed to make the exchange process a priority and therefore funding has been woefully inadequate for years. Many of our member states can cite specific examples of administrative exchanges taking over a decade to complete.

Frustrated with the administrative process, some states have turned to Congress to effectuate these exchanges. The Owyhee Land Exchange is an Idaho example. The Owyhee Initiative designated 517,000 acres of wilderness (map shown Attachment A) with the goal to create and maintain a functioning, unfragmented landscape. Since 2008 the BLM and the Idaho Department of Lands have identified approximately 35,000 acres on each side of the ownership equation that is in the best interest of both entities to exchange within the area. The best case scenario for estimated completion is now 2015. In the interim, federal permitees and state trust land lessees remain in limbo, unable to effectively plan an economically viable future.

As the Committee is well aware, the congressional process is unpredictable, often expensive, and can still take years to complete even if there is broad support for a proposed exchange. Lastly, funding to purchase state inholdings within federal conservation areas has essentially disappeared as budgets for these purposes have been reduced dramatically over recent decades to address ongoing concerns of fiscal responsibility. The bottom line is that our existing options for removing state lands from within federal conservation areas just do not work effectively.

For several years, WSLCA has been working with our member states, Members of Congress, and outside groups to craft a proposal that we believe will be an effective tool to allow states to efficiently remove their lands from inside federal conservation areas and relocate these values to locations that are more appropriate for the generation of revenue for schools and state institutions. Additionally, our proposal will enhance federal conservation and management areas by eliminating the state owned inholdings. We believe we have built a broad spectrum of support for our concept and we are now turning to this Committee to assist in crafting bi-partisan legislation that will implement our proposal.

As a supplement to exchanges and purchases, WSLCA is proposing legislation similar to the existing federal statutes (43 U.S.C. 851-852) that permit state "in lieu" selections of federal public lands. These statutes, originally codified as Revised Statutes 2275-2276, allow Western land grant states to select federal lands in lieu of lands originally granted to the states that ended up not being available due to preexisting conveyances or federal special purpose designations. By way of example, if the federal government had created an Indian reservation or issued a homestead patent before a state's title to a particular state parcel had vested, the state was entitled to select an equal amount of available federal land in lieu of the lands that were lost (in lieu selections are often synonymously referred to as "indemnity" selections).

By creating new conservation designations that have limited the states from utilizing school lands for their intended purposes, the United States has in a very real sense failed to live up to the promise of the statehood land grants. The WSLCA proposal would help rectify this situation by confirming the right of the states to relinquish state trust lands within federal conservation designations to the United States, and select replacement federal lands outside such areas. This would allow the Federal Government to obtain unified ownership and management authority over areas deemed important for conservation management. It would also uphold the "bargain" struck by the United States and the Western states under which the states would be granted useable land for the support of public schools and other public institutions. Concerns also exist within many western states about recent petitions to list threatened and endangered species, particularly the sage grouse. Where priority habitat for sage grouse exists within these conservation designations, this circumstance could likely create additional constraints to managing state lands. This bill would facilitate another means by which states could dispose of lands constrained by threatened and/or endangered species considerations.

The mechanism of relinquishment and selection has been utilized previously by Congress, and should not be difficult to implement. Under the WSLCA proposal, states owning lands within federal conservation designations would simply deed the lands back to the United States, subject to any valid existing rights. This conveyance would entitle the states to select replacement lands from the unappropriated federal public lands within the state utilizing the existing process for such selections set forth in 43 C.F.R. Part 2620 (2010). WSLCA believes that the federal legislation should also incorporate the following concepts previously adopted by the Department of the Interior in its guidance and agreements concerning state indemnity selections:

1- In the application of law, regulations and policy concerning indemnity selections, the equities of the states should be considered to the greatest degree permitted;

2- Valuation of lands relinquished by the states, and state selections, should be based on "roughly equivalent value", utilizing appropriate valuation materials, but not requiring expensive formal appraisals;
3- Because BLM Resource Management Plans (RMPs) rarely mention state indemnity selections, it is appropriate to presume that state selections are plan-compliant unless significant public values will be lost or impaired by the selection; and
4- Conveyance of lands to the states through the selection process should be deemed to be in the national interest under section 102(a)(1) of FLPMA.

All of the above concepts were agreed by the BLM in a Memorandum of Understanding between BLM and WSLCA dated January 8, 1981, and incorporated in departmental guidance in 1981 and 1982. These concepts were recently reiterated in the Master Bureau-wide Memorandum of Understanding Between United States Department of the Interior, Bureau of Land Management and The Western States Land Commissioners Association Concerning Management of Public and State Trust Lands and Resources in the Western United States, Agreement Number BLM-WO-300-2012-02. In addition to these items, WSLCA believes that it is appropriate to impose reasonable time deadlines on the BLM's processing of state selection applications, because the recent experience of the states has been that BLM is often hampered given competing demands and limited budgets to process state selection actions in a timely manner.

At the same time, WSLCA acknowledges environmental and economic realities associated with the transfer of lands out of federal ownership. WSLCA does not object to requirements for NEPA analysis of state selections (so long as BLM continues its customary practice of funding necessary studies). In addition, because selections would be limited to unappropriated public lands, the right to select lands would not extend to areas such as wilderness, national forests, and other conservation or special purpose designations.

In conclusion, it is important to note that the current proposal is not a proposal for the disposition of the federal public land base, rather a mechanism for the United States to acquire state trust lands with high conservation values, while timely and equitably compensating the states for the same through the selection of replacement lands. The U.S. Supreme Court has clearly held that the original purpose of the in lieu selection process was to give the states the benefit of the bargain struck at statehood – if lands were not available to the states for educational purposes, the states could select replacement lands. Existing and proposed conservation designations on federal lands have the effect of depriving the western states of the ability to use granted trust lands for their original purpose – public education. The proposed legislation promotes conservation while giving the states the benefit of their statehood bargain with the United States.

We thank the Subcommittee for your attention to this important matter and we look forward to working with you to craft legislation that can gain broad support and ultimately be enacted to better fund the education of our children. Thank you for the opportunity to testify and I would be happy to answer any questions.

Attachment A
Owyhee Land Exchange Map